



Employment Law for **BUSINESS** sixth edition
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Fair Labor Standards Act Statutory Basis

Every employer shall pay to each of his employees who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce, wages at the following rates: . . . not less than \$5.15 an hour beginning September 1, 1997. Sec. 6(a), Fair Labor Standards Act of 1938, as amended, 29 USC 201, et seq.

. . . No employer shall employ any of his employees for a workweek longer than forty hours unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed. Sec. 7(a)(1), Fair Labor Standards Act of 1938, as amended, 29 USC 201, et seq.

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Show me the Money!

- Fair Labor Standards Act (FLSA)
 - Law to regulate pay and hours worked passed in 1938
 - Set standards for minimum wage
 - Prohibits pay differentials based solely on gender
- FLSA is administered by the U.S. Department of Labor's Wage and Hour Division
 - States also have wage and hour provisions administered by comparable state agencies
- Regulates child labor, wages and hours
- Requires records on wages and hours
- Violations

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Covered Employees

- Two types of coverage in FLSA:
 - Individual coverage
 - Enterprise coverage
- The law applies to both part-time and full-time employees
- Federal, state and local employees are covered
- The law also covers domestic service workers
- There are exemptions

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Minimum Wages

- The minimum wage law was established after WWII in hopes that it would avoid another depression
- Under FLSA, employers are required to pay covered employees a certain minimum hourly wage
- State wage laws may have higher minimums than the federal law
- Time and a half pay
- Subminimum wage employees
- Tipped employees

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Minimum Wages (continued)

- Not everyone is covered under the statute
- Primary exemptions
- Rule change from August 2004
 - Prior to the rule change, salary levels used in the wage and hour rules had not been updated for nearly 30 years
 - Employees earning up to \$23,660 per year (\$455/week) are automatically entitled to overtime pay

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Minimum Wages (continued)

- Executive employees are exempt if they:
 - Manage two or more employees
 - Have firing, hiring and promotion authority
- Employees who earn at least \$100,000 per year and perform some executive, professional, or administrative job duties are automatically exempt from overtime provisions
- Back wages

15-7

Overtime Provisions

- FLSA does not **limit the hours** employees work, but, rather, **sets standards** for the hours constituting a normal workweek for wage purposes
- Sets wage rates for hours worked over and above the normal week
- If an employee works over 40 hours, he or she must be paid time and a half for the time worked in excess of 40 hours

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Child Labor Laws

- FLSA sets minimum age standards for allowing children to work
 - Most cannot work before age 16
 - Age 18 the minimum for hazardous jobs
 - Certain jobs allowed for children 14-16 that do not interfere with their health, education, or well-being
- State child labor laws override federal law

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Family and Medical Leave Act Statutory Basis

Leave Requirement

- (a) (1) Entitlement to leave—an eligible employee shall be entitled to a total of 12 workweeks of leave during any 12-month period for one or more of the following:
 - (A) Because of the birth of a son or daughter of the employee and in order to care for such son or daughter.
 - (B) Because of the placement of a son or daughter with the employee for adoption or foster care.
 - (C) In order to care for the spouse, or a son, daughter, or parent, of the employee, if such spouse, son, daughter, or parent has a serious health condition.
 - (D) Because of a serious health condition that makes the employee unable to perform the functions of the position of such employee. [The Family and Medical Leave Act of 1993, 29 U.S.C. § 2601 et seq.]

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Family and Medical Leave Act

- FLMA was enacted primarily in response to job retention after having a child
 - Now much broader scope
- General provisions
 - Guarantee job after leave for a birth, an adoption, or care of sick children, spouses, or parents
 - Applies to employers with 50 or more employees within a 75-mile radius
 - Employers can require medical confirmation of an illness
 - Leave is unpaid

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Occupational Safety and Health Act Statutory Basis

§654 (§5) Duties

- (a) Each employer—
 - (1) shall furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees;
 - (2) shall comply with occupational safety and health standards promulgated under this Act.
- (b) Each employee shall comply with occupational safety and health standards and all rules, regulations and orders issued pursuant to this Act which are applicable to his own actions and conduct.

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Safety at Work

- Each year:
 - 5,700 Americans die from workplace injuries
 - 50,000 die from illnesses caused by workplace exposure
 - 4.7 million suffer nonfatal workplace injuries
- OSHA claims that since 1971, the act has helped cut workplace fatalities by more than 60 percent and injury/illness by 40 percent

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General Provisions

- OSHA requires that an employer provide a safe workplace
- Contributory negligence
- Assumption of risk
- Fellow servant rule
- Worker's limited in financial recovery, but may now obtain relief from hazardous situations
- Section 5(a)
 - The employer must comply with all the safety and health standards dictated by the Department of Labor
 - The employer must furnish a workplace fee of hazards

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LO5

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General Provisions (continued)

- OSHA creates certain specific regulatory standards of safety
- OSHA conducts routine inspections in certain high-risk industries
- Penalties and "abatement orders" are assessed in connection with an inspection officer's report
- Employers covered by the Act must maintain records for OSHA compliance
- Employees must be informed of their OSHA rights by their employer

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Procedure for Enforcement

- Responsibility for enforcing the acts rests with OSHA under the auspices of the Department of Labor
- Occupational Safety and Health Review Commission
- “Willfulness”
 - Increase in fines
 - Definition of “willful”

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Specific Regulations

- Physical layout of the worksite
- Training
- Medical examinations
- Setting standards
- Voluntary compliance programs
- Continual-training requirement
- Emergency temporary standards
- Continual training requirement

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Employee Benefits Statutory Basis

Employee Retirement Income Security Act

§ 1132. Civil Enforcement.

(a) A civil action may be brought—

(1) By a participant or beneficiary—

(B) to recover benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan.

§ 1140. Interference with protected rights.

It shall be unlawful for any person to discharge, fine, suspend, expel, discipline, or discriminate against a participant or beneficiary for exercising any right to which he is entitled under the provisions of an employee benefit plan, or for the purpose of interfering with the attainment of any right to which such participant may become entitled under the plan.

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Will It Be There When I Retire?

- Although not required, many firms offer employees retirement plans, health care, and other employee benefits
- To protect pension benefits of workers, Congress enacted the Employee Retirement Income Security Act (ERISA)

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ERISA

- Does not cover plans by government entities, churches, non U.S. residents, or independent contractors
- ERISA covers welfare plans and retirement or pension plans
- Reporting and disclosure
 - The employer must provide information to each participant and the federal government
 - Summary plan description (SPD)
- Pension Protection Act of 2006

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ERISA (continued)

- Fiduciary duty
 - Loyalty
 - Exclusive purpose
 - Prudence
 - Diversification
 - Compliance with plan documents
- Eligibility and vesting rules
- Funding requirements for defined benefit plans
- ERISA litigation

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ERISA (continued)

- Consolidated Omnibus Budget Reconciliation Act (COBRA)
- Health Insurance Portability and Accountability Act (HIPAA)
 - HIPAA privacy rules
 - General obligations of covered entities
- Enforcement of ERISA

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Summary

- Employers must be aware that employees have certain rights due to them under various statutes.
- Children below a certain age may not be employed except as specified by law, and there are only certain hours they can work and certain jobs they can do.
- By law, employees who have worked for an employer for at least 12 months are entitled to take up to 12 weeks' unpaid leave for under certain circumstances without job loss.
- Employees have a right to a safe workplace, and OSHA is there to help protect that right. Employers are not required to provide workplace benefits and retirement plans for their employees, but if they do they must follow applicable laws.
- An awareness of these workplace rules is a must for an employer who wishes to avoid federal and state liability for violations.

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